IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7761 of 1998

with

SPECIAL CIVIL APPLICATION No 7758 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SABARKANTHA DISTRICT CENTRAL COOPERATIVE BANK LIMITED

Versus

RANCHHODJI DALAJI JHALA

Appearance:

MR BN PATEL for Petitioner

MS MANISHA LAVKUMAR AGP for Respondent No. 5

None present for other Respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 30/06/2000

ORAL JUDGEMENT

#. Heard learned counsel for the parties.

#. In both the matters identical issues have been raised and the petitioners are also common hence they are taken up for hearing together and are disposed of by this common order.

#. In the year 1987 the society Laljipura Group Seva Sahakari Mandali Limited was ordered to be wound up and the petitioner bank was appointed as Liquidator. The respondent No.5 appointed the petitioner as Trustee/authorised to prosecute pending Lavad suits of the society. The Liquidation proceedings could not be completed within 7 years, naturally the same stands terminated and the registration of the society was also cancelled. The suit filed by the society came to be dismissed on 15.2.95. The petitioner as a trustee/authorised prosecutor filed the appeal before the Tribunal. Under the impugned order the appeal was dismissed on the ground that the registration certificate of the society has been cancelled and in support of this ground the Tribunal placed reliance on the provision of Section 20 of the Gujarat Cooperative Societies Act, 1961.

#. Having heard the learned counsel for the parties I am satisfied that the learned Tribunal has failed to appreciate in correct perspective the object and purpose of the scheme underlying the Act. It is true that in case the Liquidation is not completed within 7 years or where the Liquidation is completed, naturally the same proceedings have to come to an end and the registration of the society has to be cancelled but when the matters are pending in the courts are not decided then those are to be continued and in that case the Liquidator of the society may not be competent but the Registrar is to be nominated by the State government as custodian of the assets and liabilities of the society. The Registrar can proceed with the suits. Only on this ground, the suits will not come to an end otherwise it will detrimental to the very purpose and object of the Cooperative Societies Act. The Registrar being custodian or the Trustee of the property of the company which includes the assets and liabilities it has all the right to ask the bank to recover the debts of the society by continuing the suit.

In the facts and circumstances of the case, the petition does not become infructuous. In case the order of the Tribunal is allowed to stand it will result in discharging the debtor from its liabilities which fall

upon it ultimately on success of the suit filed by the bank for the society. It is not permissible under law.

As a result of the aforesaid discussion both these petitions succeed and the same are allowed and the order dated 8.6.98 passed by the Gujarat Cooperative Tribunal dismissing the Appeal Nos. 87/95 and Appeal No.88 of 95 are quashed and set aside. The Tribunal is directed to restore the appeals to their original number and decide the same within a period of 3 months from the date of the receipt of the writ of this order on merits. Rule is made absolute in both the matters. No order as to costs.

(S.K.Keshote, J.)

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